

**§ 780.129 Required relationship of practices to farming operations.**

To come within this secondary meaning, a practice must be performed either by a farmer or on a farm. It must also be performed either in connection with the farmer's own farming operations or in connection with farming operations conducted on the farm where the practice is performed. In addition, the practice must be performed "as an incident to or in conjunction with" the farming operations. No matter how closely related it may be to farming operations, a practice performed neither by a farmer nor on a farm is not within the scope of the "secondary" meaning of "agriculture." Thus, employees employed by commission brokers in the typical activities conducted at their establishments, warehouse employees at the typical tobacco warehouses, shop employees of an employer engaged in the business of servicing machinery and equipment for farmers, plant employees of a company dealing in eggs or poultry produced by others, employees of an irrigation company engaged in the general distribution of water to farmers, and other employees similarly situated do not generally come within the secondary meaning of "agriculture." The inclusion of industrial operations is not within the intent of the definition in section 3(f), nor are processes that are more akin to manufacturing than to agriculture (see *Bowie v. Gonzales*, 117 F. 2d 11; *Fleming v. Hawkeye Pearl Button Co.*, 113 F. 2d 52; *Holtville Alfalfa Mills v. Wyatt*, 230 F. 2d 398; *Maneja v. Waialua*, 349 U.S. 254; *Mitchell v. Budd*, 350 U.S. 473).

**PRACTICES PERFORMED "BY A FARMER"****§ 780.130 Performance "by a farmer" generally.**

Among other things, a practice must be performed by a farmer or on a farm in order to come within the secondary portion of the definition of "agriculture." No precise lines can be drawn which will serve to delimit the term "farmer" in all cases. Essentially, however, the term is an occupational title and the employer must be engaged in activities of a type and to the extent that the person ordinarily regarded as

a "farmer" is engaged in order to qualify for the title. If this test is met, it is immaterial for what purpose he engages in farming or whether farming is his sole occupation. Thus, an employer's status as a "farmer" is not altered by the fact that his only purpose is to obtain products useful to him in a non-farming enterprise which he conducts. For example, an employer engaged in raising nursery stock is a "farmer" for purposes of section 3(f) even though his purpose is to supply goods for a separate establishment where he engages in the retail distribution of nursery products. The term "farmer" as used in section 3(f) is not confined to individual persons. Thus an association, a partnership, or a corporation which engages in actual farming operations may be a "farmer" (see *Mitchell v. Budd*, 350 U.S. 473). This is so even where it operates "what might be called the agricultural analogue of the modern industrial assembly line" (*Maneja v. Waialua*, 349 U.S. 254).

**§ 780.131 Operations which constitute one a "farmer."**

Generally, an employer must undertake farming operations of such scope and significance as to constitute a distinct activity, for the purpose of yielding a farm product, in order to be regarded as a "farmer." It does not necessarily follow, however, that any employer is a "farmer" simply because he engages in some actual farming operations of the type specified in section 3(f). Thus, one who merely harvests a crop of agricultural commodities is not a "farmer" although his employees who actually do the harvesting are employed in "agriculture" in those weeks when exclusively so engaged. As a general rule, a farmer performs his farming operations on land owned, leased, or controlled by him and devoted to his own use. The mere fact, therefore, that an employer harvests a growing crop, even under a partnership agreement pursuant to which he provides credit, advisory or other services, is not generally considered to be sufficient to qualify the employer so engaged as a "farmer." Such an employer would stand, in packing or handling the product, in the same relationship to the produce as if it were from the fields or